

Garden Valley Ranch

31258

86-07

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8 UNITED STATES  
9 ENVIRONMENTAL PROTECTION AGENCY  
10 REGION 9

11 In The Matter Of: )

12 THE GARDEN VALLEY RANCH )  
13 ESTATES COMMUNITY )  
14 SERVICES DISTRICT; and )  
15 TYNES EARTHMOVING and JOHN TYNES, )  
16 PRESIDENT, )

ORDER

86-07

17 Respondents. )

18 PROCEEDING UNDER SECTION 106(a) )  
19 OF THE COMPREHENSIVE ENVIRONMENTAL )  
20 RESPONSE, COMPENSATION AND LIABILITY )  
21 ACT OF 1980 (42 USC 9606(a)) )

22 ORDER

23 This Order is issued to the Garden Valley Ranch Estates  
24 Community Services District ("Garden"), and Tynes Earthmoving  
25 and John Tynes pursuant to §106(a) of the Comprehensive Environ-  
26 mental Response, Compensation and Liability Act of 1980 (CERCLA),  
27 42 USC 9606(a), by authority delegated to the undersigned by  
28 the Administrator of the United States Environmental Protection  
Agency (EPA). Notice of the issuance of this Order has heretofore  
been given to the State of California.

1       The Director, Toxics and Waste Management Division, EPA  
2       Region IX has determined that there may be an imminent and sub-  
3       stantial endangerment to the public health and welfare and the  
4       environment caused by a release of a hazardous substance as  
5       defined in §101(14) of CERCLA, 42 USC 9601 (14), resulting from  
6       the presence of asbestos in roadway materials in Garden Valley,  
7       California. (See attached map.)

8       This Order directs the Respondent to undertake actions to  
9       protect the public and the environment from this endangerment.

10                               FINDINGS OF FACT

- 11
- 12   1.   In 1981 or 1982, Garden constructed six and one half miles  
13       of unpaved roads using serpentine rock supplied by Tynes  
14       and Tynes Earthmoving.
  - 15   2.   On or about June 5, 1986, the presence of asbestos on six  
16       and one half miles of unpaved roads in the Garden Valley Ranch  
17       Estates Community Services District ("The Site") was brought  
18       to EPA's attention.
  - 19   3.   Vehicle traffic over the roads is believed to be the primary  
20       contributor to an airborne dust problem and the mechanism by  
21       which rock is crushed, releasing asbestos fibers.
  - 22   4.   On June 25, 1986 the El Dorado County Air Pollution Control  
23       District collected three composite samples of the roadway  
24       material for analysis and found asbestos levels between 5  
25       and 30%, measured by polarized light microscopy (PLM).
  - 26   5.   On August 4, 1986 representatives of the EPA collected samples  
27       at the Site and up to 20% asbestos was found, measured by PLM.
  - 28   6.   The National Emission Standards for Hazardous Air Pollutants

1 (NESHAPS), as authorized by Section 112 the Clean Air Act,  
2 42 U.S.C. § 7414 regulates asbestos containing materials.  
3 NESHAPS defines any materials with more than 1% asbestos (as  
4 measured by PLM), that hand pressure can crumble, pulverize  
5 or reduce to powder when dry, to contain "friable asbestos."  
6 See 40 C.F.R. § 61.141.

7 7. EPA has had extensive field experience at sites where quarried  
8 serpentine stone containing asbestos has been used as a  
9 surfacing material on unpaved roadways. At these sites EPA  
10 found that road base stone subjected to the constant crushing  
11 and grinding action of vehicular traffic will, over time,  
12 transform asbestos mineral from a solid crystalline substance  
13 into a friable asbestos material.

14 8. Friable asbestos fibers can be inhaled and have been shown  
15 to cause lung cancer and other respiratory diseases.

16 9. The population at risk are residents in the area and travelers  
17 on the roadways. Approximately 100 people reside in Garden  
18 Valley Ranch Estates.

19 CONCLUSIONS OF LAW  
20

21 1. Respondents are "persons" as defined in Section 101(21) of  
22 CERCLA, 42 U.S.C. § 9601(21).

23 2. The roadway and surrounding area is a "facility" as defined  
24 in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

25 3. Respondent Garden Valley Ranch Estates Community Services  
26 District is also a person, who by contact, agreement or  
27 otherwise arranged for disposal of hazardous substances, and  
28 is therefore a responsible party as defined in Section

- 1 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
- 2 4. Respondents Tynes Earthmoving and John Tynes, its President,
- 3 are also generators who by contract, agreement or otherwise
- 4 arranged for disposal of hazardous substances, and are there-
- 5 fore responsible parties as defined by Section 107(a)(3) of
- 6 CERCLA, 42 U.S.C. § 9607(a)(3).
- 7 5. Asbestos is a hazardous substance as defined in § 101(14) of
- 8 CERCLA, 42 U.S.C. § 9601(14) and is subject to the terms and
- 9 provisions of that Act.
- 10 6. The spreading and crushing of asbestos laden-rock is the
- 11 release of a hazardous substance pursuant to Section 101(22)
- 12 of CERCLA, 42 U.S.C. § 9601(22).
- 13 7. Respondents are jointly and severally liable for the actions
- 14 required by this Consent Order pursuant to CERCLA § 107, 42
- 15 U.S.C. § 9607.

16

17 DETERMINATIONS

18 Based upon the foregoing Findings of Fact and Conclusions of

19 Law, the Director, Toxics and Waste Management Division, EPA Region

20 9 has made the following determinations:

- 21 1. The release of asbestos at a facility owned and operated by
- 22 the Respondents may present an imminent and substantial
- 23 endangerment to public health and welfare and the environment.
- 24 2. In order to prevent or mitigate immediate and significant
- 25 risk of harm to human life, health or to the environment, it
- 26 is necessary that immediate action be taken to contain and
- 27 terminate the release of hazardous substances at the site.
- 28 3. The response measures ordered herein are consistent with the

1 National Contingency Plan, 40 C.F.R. Part 300.65.

- 2 4. Respondents are responsible for conducting the actions ordered  
3 herein, which are necessary to protect human health, welfare,  
4 and the environment.

5  
6 ORDER

7 Based upon the foregoing Findings of Fact, Conclusions of  
8 Law and Determinations, Respondents are hereby ordered and directed  
9 to take the following measures:

10 Site Mitigation Measures

- 11 1. Within five (5) days of receipt of this order, Respondents  
12 shall submit to EPA a work plan describing mitigation actions  
13 including the application of a sealant to prevent dust  
14 emissions and a protective layer that will result in a long  
15 term solution to the problem. This work plan shall include  
16 detailed specifications for the materials and procedures to  
17 be used. It also must include a schedule for implementation  
18 of the mitigation actions.  
19 2. Implementation of the work plan shall begin immediately upon  
20 receipt of EPA approval of the plan and shall be completed  
21 in accordance with the approved plan schedule.

22 Compliance with Applicable Laws

- 23 3. In carrying out the terms of this Order, Respondents shall  
24 comply with all federal, state and local laws and regulations.

25 Access

- 26 4. Employees and authorized representatives of EPA shall be  
27 granted access to the facility for the purpose of verifying  
28 compliance with the provisions of this Order.

1 On-Scene Coordinator

2 5. The EPA On-Scene Coordinator (OSC) shall have authority  
3 vested in the "On-Scene Coordinator" by 40 C.F.R. Part  
4 300, et seq., published in 42 Fed. Reg. 31186 (July 16,  
5 1982). The OSC shall have the authority to designate a  
6 representative who shall have access to the site at all  
7 times for the purpose of determining the adequacy of the  
8 Respondents' activities.

9 Government Not Liable

10 6. The United States Government shall not be liable for any  
11 injuries or damages to persons or property resulting from  
12 the acts or omissions of the Respondent, its employees,  
13 agents or contractors in carrying out activities pursuant  
14 to this Order, nor shall the Federal Government be held as  
15 a party to any contract entered into by the Respondents, or  
16 their agents in carrying out activities pursuant to this  
17 Order.

18 Penalties for Noncompliance

19 7. A willful violation or failure or refusal to comply with  
20 this Order, or any portion thereof, may subject you under  
21 §106(b) of CERCLA, 42 U.S.C. 9606(b), to a civil penalty of  
22 not more than \$5000 for each day in which such violation  
23 occurs or such failure to comply continues. Failure to  
24 comply with this Order, or any portion thereof, may subject  
25 you under §107(c)(3) of CERCLA, 42 U.S.C. 9607(c)(3), to  
26 liability for punitive damages in an amount up to three  
27 times the amount of any costs incurred by the Government  
28 as a result of your failure to take proper action.

1 8. EPA may take over the removal action at any time if EPA  
2 determines that Respondents are not taking appropriate action  
3 to mitigate the site hazard. In the event EPA assumes  
4 responsibility for the removal action, Respondents will be  
5 liable for all costs incurred by EPA to mitigate the site  
6 hazard. EPA may order additional site characterization  
7 and/or mitigation actions deemed necessary by EPA to protect  
8 the public health and welfare or the environment.

9 Opportunity to Confer

10 9. You may request a conference with the Director, Toxics and  
11 Waste Management Division, EPA Region 9 or his staff to  
12 discuss the provisions of this Order. At any conference  
13 held pursuant to your request, you may appear in person or  
14 by counsel or other representatives for the purpose of  
15 presenting any objections, defenses or contentions which  
16 you may have regarding this Order. If you desire such a  
17 conference, you must make such a request orally within 24  
18 hours of receipt of this Order, to be immediately confirmed  
19 in a written request. Please make any such request to:

20  
21 John Kemmerer or  
22 Superfund Programs Branch  
23 Environmental Protection Agency  
215 Fremont Street  
San Francisco, CA 94105  
(415) 974-7112

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24  
25 Parties Bound

26 10. This Order shall apply to and be binding upon the Respondents,  
27 its officers, directors, agents, employees, contractors,  
28 successors and assigns.



1 Notice of Intent to Comply

2 11. Immediately upon receipt of this Order, Respondent shall  
3 orally inform EPA of its intent to comply with the terms of  
4 this Order. This shall be confirmed in writing within two  
5 (2) days of receipt of this Order.

6 Endangerment during Implementation

7 12. In the event that the Regional Administrator of EPA, Region  
8 9 determines that any activities (whether pursued in  
9 implementation of or in noncompliance with this Order) or  
10 other circumstances may be endangering the health and  
11 welfare of the people on the site or in the surrounding  
12 area or to the environment, the Director, Toxics and Waste  
13 Management Division of EPA, Region 9, may order Respondents  
14 to halt the implementation of this Order for such period  
15 of time as is needed to abate the endangerment.

16 Effective Date

17 13. Notwithstanding any conferences requested pursuant to the  
18 provisions of this Order, this Order is effective upon receipt  
19 and all times for performance shall be calculated from that  
20 date.

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1 It is so ordered on this 21 day of August, 1986.

2  
3 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

4  
5 BY: *Harry Seraydarian*

6 HARRY SERAYDARIAN  
7 DIRECTOR, TOXICS & WASTE MANAGEMENT DIVISION  
8 EPA, REGION IX

9 Contact Persons:

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